



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC - 4 2008

The Honorable Mitch McConnell
United States Senate
Washington, D.C. 20510


Dear Senator McConnell:

Thank you for your November 12, 2008, letter to Stephen Johnson, Administrator of the U.S. Environmental Protection Agency, concerning the Smith's Farm Superfund Site in Bullitt County, Kentucky. Your letter was forwarded to me for a response.

Enclosed, please find a copy of my response to Mr. Ron Stout, partner in S & S Land Development Group, LLC, regarding redevelopment at this site.

If you have questions or need additional information from EPA, please contact me or the Region 4 Office of Congressional and Intergovernmental Relations at (404) 562-8327.

Sincerely,


J. I. Palmer, Jr.
Regional Administrator

Enclosure
cc: Bruce Scott, KDEP

Nelson Young



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC - 1 2008

Mr. Ron Stout
S & S Land Development Group, LLC
1458 Cherokee Road
Louisville, Kentucky 40204

Dear Mr. Stout:

Thank you for your October 17, 2008, letter regarding redevelopment of the Smith's Farm Property (the Property) in Brooks, Bullitt County, Kentucky, on which the Smith's Farm Superfund Site (the Site) is located.

As noted in your letter, the Region 4 office of the U.S. Environmental Protection Agency (EPA) does support the reuse and redevelopment of contaminated properties, including Superfund sites. To facilitate redevelopment, Region 4, at my direction, was the first EPA regional office to establish a comprehensive Prospective Purchaser Inquiry (PPI) service, which offers accurate, comprehensive, and timely information about a Superfund site to enable a prospective purchaser to make a timely business decision about whether to purchase the site or not. This service is also used by individuals to discuss the redevelopment options at Superfund sites that are in various stages of the cleanup process. Prospective purchasers/developers and Region 4 staff discuss: (1) the proposed redevelopment and whether it is compatible with the remedy and the existing institutional controls at a site; (2) the current status of EPA's cleanup and the future anticipated actions; (3) the applicable federal landowner liability protections for bona fide prospective purchasers (BFPP) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (4) liens that might apply to a property pursuant to CERCLA Section 107(l) (Superfund liens) or CERCLA Section 107(r) (Windfall liens); and (5) the role of the Region 4 staff in the future redevelopment.

Under Region 4's policy, EPA staff may generally discuss the redevelopment plans with a prospective purchaser or developer and identify obvious incompatibilities; however, the prospective purchaser/developer bears the burden of not impeding or injuring the remedy. Region 4 staff may inform a prospective purchaser/developer of any "reasonable steps" that EPA believes the prospective purchaser/developer will need to take for the proposed redevelopment to be compatible with the remedy, which can be quite complex in some cases.

In this case, the Region 4 technical and legal staff have had numerous meetings and conference calls with you and your environmental consultants about the proposed timber harvesting and redevelopment of the Property. I understand the Region 4 staff identified the reasonable steps that EPA believed were necessary to protect the remedy during the timber harvesting, just as we would do as part of the PPI service. S & S Development prepared a site development plan (SDP) for the timbering that outlined erosion controls to protect the remedy, and EPA reviewed the SDP for any obvious inconsistencies with the remedy. We found none. As a result, S & S Development began the timbering activities in December 2007.


I understand that, in June 2008, Region 4 staff informed you of the next reasonable step that EPA believes is necessary for S & S Development if it wishes to pursue future residential redevelopment. As was the case with the timber harvesting, S & S Development must produce a residential site development plan (RSDP), which documents that the proposed development will protect the remedy at the Site. The RSDP should explain, among other things, the installation of the base infrastructure (e.g., roads, curbing, sewer lines, water lines, power lines, etc.) that will support future residential housing and, in part, allow EPA to evaluate potential impacts to the remedy. We cannot give S & S Development Company written consent to conduct the next step of the redevelopment until the RSDP is provided to EPA and the Agency is satisfied that the development proposed will not adversely impact the remedy.

As of today, it is my understanding that S & S Development has not provided a RSDP. Once received, we will review the RSDP for any obvious inconsistencies with the remedy, and if there are none, EPA can provide S & S Development written consent to continue with the next phase of the redevelopment.

I now understand that S & S Development's original plans for the Property may have changed. Instead of redeveloping the Property, S & S Development may prefer to sell the Property, which you believe can only occur if the deed restriction component of the remedy is removed. It is my understanding that the Region 4 staff has consistently informed you that to remove the deed restriction, EPA must modify the Record of Decision (ROD) which documents the need for the deed restriction. In order to support a ROD modification, additional work will need to be performed at the Site and S & S Development will be responsible for conducting, or paying for, this additional work.

In closing, I truly regret that the call you described in your letter has caused you such concern. I assure you that we strive to treat all parties professionally. As outlined in this letter, we will work with you and S & S Development Company, consistent with our authority and policies, to support revitalization and redevelopment. I invite you to come to our offices in Atlanta, Georgia, if you would like to have further discussions about both the work that is necessary to support a ROD modification and the regulatory process EPA must follow to that end. We are also open to discussing potential approaches for developing a limited portion of the Property, which might be accomplished more readily. To set up this meeting, please contact Don Rigger, Chief of the Superfund Remedial and Site Evaluation Branch, at (404) 562-8744. Mr. Rigger will arrange to have a Superfund Redevelopment Coordinator present at the meeting to further explain Region 4's redevelopment policies in accordance with our PPI service. If you would like to continue the redevelopment of the Property, please notify Mr. Rigger. The Region 4 staff will review the RSDP promptly.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. I. Palmer, Jr.", with a stylized, cursive script.

J. I. Palmer, Jr.
Regional Administrator

cc: Bruce Scott, KDEP

MITCH McCONNELL
KENTUCKY

361-A RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1702
(202) 224-2541

United States Senate

REPUBLICAN LEADER
COMMITTEES:
AGRICULTURE
APPROPRIATIONS
RULES AND ADMINISTRATION

November 12, 2008

The Honorable Stephen Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0001

Dear Administrator Johnson:

I write on behalf of Mr. Ron Stout who is concerned about the Smith's Farm Superfund site.

I have enclosed a copy of Mr. Stout's correspondence, for your information. Please direct any inquiries and all relevant information to Allison Thompson in my Washington, D.C. office.

Thank you for your time and assistance. I will look forward to receiving your response.

Sincerely,



MITCH McCONNELL
UNITED STATES SENATOR

MM/at

FEDERAL BUILDING
241 EAST MAIN STREET
ROOM 102
BOWLING GREEN, KY 42101
(270) 781-1673

1985 DIXIE HIGHWAY
SUITE 345
FORT WRIGHT, KY 41011
(859) 578-0188

771 CORPORATE DRIVE
SUITE 108
LEXINGTON, KY 40503
(859) 224-8286

300 SOUTH MAIN
SUITE 310
LONDON, KY 40741
(606) 864-2026

601 WEST BROADWAY
SUITE 630
LOUISVILLE, KY 40202
(502) 582-6304

PROFESSIONAL ARTS BUILDING
2320 BROADWAY
SUITE 100
PADUCAH, KY 42001
(270) 442-4554

60957248

S & S LAND DEVELOPMENT GROUP, LLC
1458 CHEROKEE ROAD
LOUISVILLE, KENTUCKY 40204
(502) 451-3120

'08 OCT 30 AM 8:12

October 17, 2008

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Jimmy Palmer
Regional Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsythe Street, SW
Atlanta, GA 30303-8960

Re: Smith's Farm Superfund Site Redevelopment

Dear Mr. Palmer:

I feel compelled to address this letter to you directly to express my frustration and outrage with respect to a phone call in which I participated with my consultants and attorneys, representatives of the United States Environmental Protection Agency (EPA) Region 4 and representatives of the Kentucky Department for Environmental Protection (KDEP) on Tuesday, October 14. Our small company, S & S Land Development Group, LLC (S&S), comprised of two individuals, has been attempting to redevelop a portion of the Smith's Farm Superfund site for residential land use, on a part of the property where there has never been any evidence of impact by the illegal dumping and landfilling that occurred many years ago.

My partner and I have worked as cooperatively as possible with EPA to address every issue that they have raised, however, on October 14th, EPA raised concerns that had never been brought to our attention nor to the attention of our environmental consultants or attorneys, despite the fact that we are three years into this process. During our phone call, our consultants and we were treated rudely, unprofessionally and unfairly by one of your staff members, and I am therefore asking that you intercede to bring some rationality to this process.

As background for you to understand this history, the Smith's Farm Superfund property comprises a total of 560 acres, although only approximately 80 acres are fenced and currently housing the remediation contractor working for the PRP Group. If you read the Region 4 Summary of the site (attached), it states clearly that this is a "100-acre site." The site was originally listed in 1986 and successful groundwater remediation is ongoing at the property, as stated on the EPA NPL/NPL Caliber Cleanup Site Summary on the EPA Region 4 Superfund website. After all this time, one would assume that EPA and the PRP Group have adequately characterized groundwater conditions at the site, as well as other environmental conditions that

might present a risk to human health or the environment. The two record of decisions (RODs) for the regulated operable units (OU1 and OU2) are voluminous and are available online to the public and to EPA.

I understand that there may be differences of opinion between consultants and EPA with respect to the nature and amount of data that the respective parties believe is appropriate for characterizing the site or risk to human health or the environment at the site. For that reason, we had scheduled a conference call with Craig Zeller, the EPA project manager for this site, Teresa Mann, a Region 4 attorney, and representatives of the KDEP. It was our understanding from Mr. Zeller's correspondence that the intent of the meeting was to establish what information EPA would find appropriate for removing the declaration of restrictions on the property that prohibit residential development. It is my firm belief that the residential restriction should never have been placed on the approximately 480-acre portion of the property outside of the approximately 80-acre fenced-in area that encloses the two OUs (which is supported by the attached Region 4 Summary), but we were prepared to discuss Mr. Zeller's list during our call. We have a sincere respect for Mr. Zeller's abilities and have worked with him cooperatively throughout this process.

Unfortunately, our call did not follow the agenda that we had been led to believe would lead to a task list to be accomplished from the meeting. Mr. Zeller first outlined his thoughts on what documentation needed to be submitted to remove the residential restriction for the approximately 480-acre tract surrounding the approximately 80-acre area occupied by the two OUs. In his discussion, for the first time in this three-year process, he stated that he expected a risk assessment for the entire 480-acre tract to be submitted. Our consultants were completely taken aback by this request, particularly considering the large amount of data that is already available from the EPA and the PRP group's consultants that have demonstrated no impacts outside the 80-acre fenced-in area.

When we discussed the information created for or by EPA, Teresa Mann stated that EPA did not have the time to go back and look at any of that information and that if it was available it was our duty to provide it to them. She also stated that our consultants would need to do groundwater modeling and further assessment to demonstrate that there was no risk, although extensive investigation was conducted by EPA and the PRP group in order to construct the existing landfill cap and its associated remedy components, including the leachate collection system that EPA identified in its "2006 5-year Review Report" Protectiveness Statement that states:

The remedy at the Site currently protects human health and the environment because the landfill cap is intact, the leachate treatment system is effective and all residents in the vicinity obtain water from the city, thus eliminating the exposure pathways relative to surface soils, surface water, and leachate water.

As you would expect, for a site that has been on the Superfund list for 22 years, this site has been completely characterized and claiming that groundwater modeling and further assessment must be completed prior to removing a residential restriction is spurious. The meeting only deteriorated after Ms. Mann's pronouncement on the need to create groundwater data that has already been extensively evaluated by EPA and the PRP group consultants. In an attempt to refocus the meeting, our attorney asked if EPA would provide us with a list of items they believed necessary to provide them the information to remove the residential restriction. After Mr. Zeller immediately responded that EPA would provide that information, he was told by Ms. Mann that EPA **would not** provide us with a list of information to address their concerns; rather, we should submit information and EPA would tell us if it is acceptable.

Finally, as we were discussing the impossibility of providing sufficient information without any guidance from EPA, Ms. Mann suggested that our consultant, who is very highly respected in this area and has worked on a number of projects throughout the country, might not have the skills necessary to provide EPA with the required information. This was a completely inappropriate comment and wholly unprofessional, reflecting, for reasons I cannot understand, the apparent bias Ms. Mann has against me and my business partner in attempting to develop an unaffected piece of property that has been out of any productive use and put it back on the tax rolls in Bullitt County, Kentucky.

I may be naïve for believing that EPA has a legitimate interest in supporting the reuse and development of nonproductive sites. The Land Revitalization and Reuse page of the Region 4 web site includes the following statement:

EPA and Region 4 seek to support the reuse and redevelopment of all types of contaminated properties, including brownfield sites, Superfund sites, RCRA sites, UST sites, and more. Land revitalization is important because it returns land to productive use, restores blighted properties, can be linked to local job opportunities, creates recreational opportunities, energizes neighborhoods, and protects the environment.

It is critical to understand that we are attempting to develop unaffected property surrounding the regulated units, and we have no intention of developing within the regulated units, in addition to an 80-foot perimeter "buffer zone" surrounding the regulated units. I am seeking your support to allow us to proceed with this project. EPA's delays in approval and its failure to provide guidance because EPA is "too busy," has now placed me in the position of having this property foreclosed on by the seller who holds a note on this property.

At this time, without the ability to remove the residential restrictions, there is no bank or large developer who is willing to invest in this project, particularly when they know that EPA will not provide any guidance or "support" to allow this property to be reused. S&S fully intends to inform EPA of all development plans and activities, but does not feel that EPA should have the

Mr. Jimmy Palmer
October 17, 2008
Page 4

right to approve or disapprove development of the unaffected portion of the property, especially as we have gone to great lengths to sufficiently demonstrate that our proposed activities will, in no way, adversely impact the regulated units nor their associated remedy components. I stand to lose a significant amount of my personal savings because of the legal and consulting expenses I have incurred responding to EPA's requests, without ever knowing when they will be satisfied.

As a taxpayer and a person trying to "do the right thing," I am astounded by the lack of support provided by your staff. I hope that you will contact me directly to discuss this process and how it can be resolved in a manner suitable to all involved parties.

Sincerely,

Ron Stout/az BED

Ron Stout

RS/clj

Attachments

cc: Mr. Stephen L. Johnson (w/attachments)
Sen. Mitch McConnell (w/attachments)
Sen. Jim Bunning (w/attachments)
Hon. John Yarmuth (w/attachments)
Rep. Ron Lewis (w/attachments)
Mr. David Lloyd (w/attachments)
Mr. Douglas Linebach (w/attachments)
Bradley E. Dillon, Esq. (w/attachments)



<http://www.epa.gov/Region4/waste/npl/nplky/smifrmky.htm>

Last updated on Thursday, October 2nd, 2008.

Region 4: Superfund

You are here: [EPA Home](#) [Region 4](#) [Land Cleanup and Wastes](#) [Superfund](#) [NPL/Caliber Sites-Kentucky](#) [Smith's Farm](#)

Kentucky NPL/NPL Caliber Cleanup Site Summaries

Smith's Farm

EPA ID: KYD097267413

Location: Brooks, Bullitt County, KY

Congressional District: 02

NPL Status: Proposed: 10/15/84; Final 06/10/86

Project Manager

Site Repository:

Ridgeway Memorial Library

2nd and Walnut Street

Shepherdsville, KY 40165

Documents:

[About PDF](#)

- [Site Profile](#)
- [Administrative Record Index \(All PDF\): OU1 \(16 pp., 645K\), OU2 \(4 pp., 168K\)](#)
- [Additional Site Documents](#) including Five Year Reviews, Records of Decisions (ROD) and Explanation of Significant Differences (ESD).
- For documents not available on the website, please contact the [Region 4 Freedom of Information Office](#) (<http://www.epa.gov/region4/foiapps/submit.htm>).

Site Background:

The Smith's Farm Site, located in Bullitt County, Kentucky is a 100-acre site which consists of a 30-acre unpermitted former drum disposal area (Operable Unit One) and a 40-acre formerly-permitted construction debris landfill (Operable Unit Two) and several smaller, isolated disposal areas. The Site was used from the 1950s until 1989 for the disposal of local construction debris, municipal solid waste and commercial/ industrial waste from businesses and manufacturing facilities in the Louisville, Kentucky, area. Spent paint thinners, off-specification paints, paint booth sludges, metal shavings from machining operations, asbestos, off-specification epoxies, waste motor and transmission fluids, are examples of contaminated materials disposed at the Site; contaminants included a wide variety of volatile and semi-volatile organics as well as heavy metals. The leachate flowing from the Site threatened the streams which run through the Site to the nearby Salt River. Soil and surface water contamination threatened the nearby residential areas. Over 2,000 people live in the area of the Site.

Cleanup Progress: Actual Construction Complete

In 1984, at the request of the State, USEPA Emergency Response completed the removal of several thousand drums from the unpermitted drum disposal area, and surfaced the area with clay to mitigate leachate problems. In January 1989, after unsuccessful negotiations, a USEPA-funded Remedial Investigation and Feasibility Study (RI/FS), which focused primarily on the unpermitted drum disposal area (Operable Unit One), was completed. In September 1989, the Record of Decision (ROD) for Operable Unit One was completed. In November 1989, one potentially responsible party (PRP), General Electric, signed an Administrative Order by Consent for a Remedial Investigation and Feasibility Study of the formerly permitted landfill (Operable Unit Two). In 1989, USEPA, through the USDOJ, filed a cost

recovery suit against General Electric, Ford, AKZO, and Hoechst Celanese for the cost of the 1984 removal. In March 1990, after further unsuccessful negotiations, USEPA issued a Unilateral Administrative Order for the Remedial Design and Remedial Action (RD/RA) for the Operable Unit One area to 34 parties, including General Electric, Ford, AKZO, and Hoechst Celanese. In September 1991, according to new information obtained during the Operable Unit One Remedial Design, an Amendment to the Operable Unit One Record of Decision was completed; the cleanup at Operable Unit One was completed in November 1995 and Operation and Maintenance (O&M) activities began immediately thereafter. The cleanup activities resulted in the thermal treatment of 21,000 cubic yards of soils contaminated with polychlorinated biphenyls (PCBs) and polyaromatic hydrocarbons (PAHs) and metals (lead); and the construction of an 11-acre capped landfill with a leachate collection system. The Operable Unit Two Remedial Investigation and Feasibility Study was completed in January 1992. The Operable Unit Two Record of Decision was completed in September 1993 due to ongoing legal activities and schedule adjustments during the Operable Unit One cleanup. In April 1994, after unsuccessful negotiations, a Unilateral Administrative Order for the Remedial Design and Remedial Action for Operable Unit Two was issued to ten (10) parties. The Design began in June 1994; the Remedial Action construction began in March 1996 and the cleanup was substantially complete in September 1998 and resulted in the proper consolidation and capping of the 40-acre, formerly permitted landfill, and the construction of a leachate treatment plant. The final inspection on the Site was completed in January 1999. Cost allocation and O&M are enforced through two August 1997 Consent Decrees and a January 1998 Administrative Consent Order. O&M at both operable units is ongoing and the leachate treatment plant is operating satisfactorily. The leachate collection tanks at the Operable Unit One area have been connected to the Influent feed to the leachate treatment plant via a new force main double-walled pipeline. The connection eliminates the hauling of Operable Unit One leachate by truck to the Operable Unit Two leachate treatment plant or to an off-site disposal facility. A Five-Year Review was conducted by EPA through the USACE and finalized in September 2001. In 2003, significant erosion damage from excessive rainfall was corrected by the contractor for the potentially responsible party (Ford).

The third Five-Year Review for the site was completed by the USACE and signed by EPA in September 2006. This review found that the on-site leachate treatment plant continues to operate satisfactorily and site remains fully protective of human health and the environment.

In December 2006, S&S Development purchased the entire 560 acre parcel from the Smith family. In August 2007, a site development plan was approved by EPA. This site development plan outlines the steps that S&S Development will implement to ensure that future site development work on the property does not compromise the integrity and protectiveness of the existing remedy for the landfills. The initial phases of site development involve logging and timber harvesting on 8 parcels of the site located entirely outside of the landfill areas. Logging on the site was initiated in December 2007 and is scheduled to be completed by the end of 2008.